

WATER LINE EXTENSION PLAN APPROVAL PROGRAM

Pursuant to N.C. General Statute 130A-317 and Chapter 21 of the Code of Ordinances of the City of Asheville, the City of Asheville became the first major municipality in western North Carolina to obtain delegated authority, from the North Carolina Department of Environment and Natural Resources (NCDENR), for the local approval of plans and specifications for the construction or alteration of the Regional Water Authority of Asheville, Buncombe and Henderson / City of Asheville water distribution system.

On February 10, 1998, City Council approved and adopted ordinance No. 2448, which became effective March 1, 1998 and reads as follows:

ORDINANCE NO. 2448

AN ORDINANCE CREATING CHAPTER 21 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE ENTITLED, "WATER DISTRIBUTION SYSTEM"

WHEREAS, the City of Asheville has the authority, pursuant to N. C. Gen. Stat. 130A-317 to establish and administer within its utility service area an approval program in lieu of State approval of water system plans; and

WHEREAS, the Asheville City Council has determined that it is in the best interest of the City to adopt its own program for water system approval;

NOW, THEREFORE, BE IT ORDAINED BY THE ASHEVILLE CITY COUNCIL THAT:

Section 1. Chapter 21 of the Code of Ordinances of the City of Asheville is hereby enacted as hereinafter set forth:

"ARTICLE I. AUTHORITY, PURPOSE AND JURISDICTION.

Sec. 21-1-1. Authority; title. Authority; title

The following ordinance to be known as the "Water Distribution System" is hereby adopted pursuant to North Carolina General Statute Section 130A-317 and rules promulgated thereunder. Amendments to North Carolina General Statute Section 130A-317 and rules promulgated thereunder that affect the City's water distribution permitting system shall be incorporated into the City's permitting program within sixty (60) days of the effective date of such amendments, or as otherwise required by law.

Sec. 21-1-2. Purpose.. Purpose.

The purpose of this Chapter is to assist and to facilitate in the provision or denial of water services to Asheville residents, residents of Asheville extraterritorial areas, and all other areas serviced by the Regional Water Authority of Asheville, Buncombe, and Henderson County, through local approval of plans to construct or alter the distribution system of the City's proposed or existing public water system.

-

Sec. 21-1-3. Jurisdiction.. Jurisdiction.

The provisions of this Chapter shall apply within the corporate limits of the City of Asheville, North Carolina, within the City of Asheville extraterritorial jurisdiction, and all other areas serviced by the Regional Water Authority of Asheville, Buncombe, and Henderson County where water service is already being provided to the permit applicant by the City of Asheville or where connection to the City of Asheville water system is immediately available to the Applicant.

ARTICLE II. DEFINITIONS AND ADMINISTRATION.

Sec. 21-2-1. Definitions.. Definitions.

City: The City of Asheville, North Carolina: The City of Asheville, North Carolina

City Manager: The City Manager of the City of Asheville or his/her designee.: The City Manager of the City of Asheville or his/her designee.

Director: The head of the Engineering Department for the City of Asheville, or his/her designee.: The head of the Engineering Department for the City of Asheville, or his/her designee.

Fees and Charges Manual: A manual adopted by the Asheville City Council listing all fees and charges associated with the City of Asheville.: A manual adopted by the Asheville City Council listing all fees and charges associated with the City of Asheville.

Hearing Officer: The Director of the City of Asheville Engineering Department or his/her designee: The Director of the City of Asheville Engineering Department or his/her designee

Master Utility Plan: Existing or future master plans prepared by the City for the purposes of providing the most effective service to the customers.: Existing or future master plans prepared by the City for the purposes of providing the most effective service to the customers.

Regional Water Authority: Regional Water Authority of Asheville, Buncombe, and Henderson County.: Regional Water Authority of Asheville, Buncombe, and Henderson County.

Standard Specifications and Details Manual: Manual approved by Asheville City Council effective May 27, 1997.: Manual approved by Asheville City Council effective May 27, 1997.

State: State of North Carolina: State of North Carolina

Utility Service Area: All areas serviced or proposed to be serviced by the Regional Water Authority of Asheville, Buncombe, and Henderson County.: All areas serviced or proposed to be serviced by the Regional Water Authority of Asheville, Buncombe, and Henderson County.

Water System: Includes but is not limited to all of the City's water distribution lines, including required fire hydrants, valves and air release valves.: Includes but is not limited to all of the City's water distribution lines, including required fire hydrants, valves and air release valves.

Sec. 21-2-2. **Administration.. Administration.**

The Director of the City of Asheville Engineering Department is hereby empowered and charged with the duty to administer and enforce this Chapter.

ARTICLE III. GENERAL PROVISIONS.

Sec. 21-3-1. **Generally; payment of expense.. Generally; payment of expense.**

All water extensions to property outside the corporate City limits and all water extensions to property inside the corporate City limits shall be made at the sole expense of the owner. Nothing in this section shall relieve any owner or developer of property from payment of acreage charges, connection charges or other charges made in conjunction with extension of or connection to water lines.

Sec. 21-3-2. **Ownership of Lines.. Ownership of Lines.**

All lines extended and constructed under this Chapter shall be of such size and material and shall be constructed in such manner as contained in the City's overall master utility plan and engineering standards. All lines so constructed or extended shall become and remain the property of the City. Provided however, the City will only approve proposed extensions that are capable of interconnection, have adequate arrangement for continued service, and that are capable of compliance with North Carolina drinking water rules.

Sec. 21-3-3. **Street Repairs at Expense of Property Owners.. Street Repairs at Expense of Property Owners.**

Repaving and repairing of all streets required to be damaged to lay and construct lines under this Chapter shall be done at the expense of the property owner obtaining the extension of water lines.

Sec. 21-3-4. Permit Requirements; Prohibited Activities; Application.. Permit Requirements; Prohibited Activities; Application.

(a) No person shall do or carry out any of the things or activities listed in subsections (1) through (3) below concerning a water distribution system (hereinafter "water system") which is, or is proposed to become a part of the City's water system and is located within the City's utility service area, as such term is defined herein, unless such person shall have applied for and shall have received from the City a permit therefor, and shall have complied with such conditions, if any, as are prescribed by such permit. Provided however, all extensions that are proposed to remain privately owned following construction must be approved by the North Carolina Department of Environment and Natural Resources, (hereinafter DENR), prior to construction. Activities prohibited without a permit are as follows:

(1) Construct or operate any water system;

(2) Alter, extend, or change the construction or method of operation of any existing or proposed water system; or

(3) Enter into a contract for the construction and installation of any water system, or for the alteration or extension of such a system.

(b) Any person proposing to undertake any activity described in subsection (a) of this section shall make timely and proper application on such forms(s) as may be prescribed by the Director and provide such information as may be required by the Director. A copy of all applications for permits, subject to this section and all approved permits and plans shall be provided to DENR pursuant to applicable law.

(c) All water systems proposed for connection to the City's water system and all proposed modifications to any existing portion of the City's water system shall be designed, constructed and installed in conformance with applicable provisions of the then current City Standard Specifications and Details Manual (hereinafter "Manual"), and all other City rules, policies and procedures. Any engineering plans, specifications and profiles submitted by applicants for construction of a water system or modifications shall be prepared by or under the direct supervision of an engineer licensed to practice in the State, shall bear the signature and seal of such engineer, and shall be subject to approval by the Director. Following the installation of the water line extension, the Engineer must provide the Director a certificate of completion. Such plans, specifications and profiles shall be prepared at the expense of the applicant. The Director shall maintain a copy of the current Manual and City requirements for public inspection.

(d) The denial of an application for a permit subject to the provisions of Section 21-3-4 shall be made in writing and shall contain each reason for the denial and the City's recommendation for changes in the applicant's proposed activities or plan which will be required in order that the applicant may obtain a permit. Nothing in such recommendation shall preclude or otherwise bar the City from denying a permit which incorporates such changes, based upon changes in circumstances or information not previously known by the City.

Sec. 21-3-5. Processing of Applications.. Processing of Applications.

(a) Each application subject to Section 21-3-4 shall be accompanied by a fee, which shall be set forth in the City's Fees and Charges Manual. A copy of the current fee schedule shall be maintained by the Director and made available for inspection upon request. Any application which is not accompanied by a fee in the proper amount may be considered incomplete.

(b) The Director shall review the fee, plans, specifications and other project data accompanying an application, and shall determine if the application and accompanying material are complete and in a form acceptable to the Director. The Director shall acknowledge receipt of a complete application.

(c) The Director shall take final action on all permit applications not later than ninety (90) days following receipt of a complete application; however, no permit shall be issued until final approval has also been given by the City Council for any related development plan. All permits issued shall be in writing, provided, however, in the event construction has not begun pursuant to an issued permit within one (1) year of the date of the permit, the permit shall expire and a new permit must be applied for and obtained by the applicant in accordance with Sections 21-3-4 through 21-3-8. Construction and operation shall strictly conform to the permit requirements. A permit may contain such conditions as the Director determines to be reasonably necessary, considering the factors on which final action on a permit can be based. Final action on any permit shall be based upon the design, capacity and manner of operation of the appropriate city water system; effectuating the purposes of all applicable rules, standards, requirement, regulations, statutes and ordinances of the City, the State, and the United States of America.

(d) If the application is not complete, the application shall be returned to the applicant. The Director shall advise the applicant in writing:

(1) How the application can be modified to make it complete and acceptable; and

(2) That the time for the Director to take final action on an application does not begin until receipt of a complete, corrected application.

(e) Any permit issued by the Director, pursuant to Sections 21-3-4 through 21-3-8, is subject to revocation, suspension, or modification, in whole or in part, upon fourteen (14)

days' written notice to the applicant by the Director for good cause, including, but not limited to:

- (1) Violation of any terms or conditions of Sections 21-3-4 through 21-3-8 or the permit;
- (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts that the applicant knew or reasonably should have known;
- (3) Refusal of or by the applicant or its contractors, agents or employee to allow authorized officers, employees or agents of the City, upon presentation of credentials, to inspect or observe any activity, system, or other work required by the applicant's permit.

Sec. 21-3-6. Enforcement.. Enforcement.

(a) *Civil Penalty.* Any person who violates, fails to comply with, or continues to violate any provision of Sections 21-3-4 through 21-3-8 or any permit issued hereunder shall be liable to the City for a maximum civil penalty of up to ten thousand dollars (\$10,000.00) per violation per day for as long as the violation(s) continue. Each day on which a violation shall occur or continue shall be deemed a separate and distinct violation. In determining the amount of the civil penalty, the Director shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, efforts to correct the violation, the compliance history of the person against whom the violation is assessed, cost of enforcement to the City, whether the violation was committed willfully or intentionally, and any other factors as justice may require.

(b) *Equitable Relief.* If any person violates the provisions of Sections 21-3-6 through 21-3-8 or the terms or conditions of any permit issued hereunder, a civil action may be commenced in the general court of justice in the name of the City for such legal and equitable relief as may be appropriate.

(c) *Other Remedies.* The remedies provided herein are not exclusive. The City may take any one, all, or any combination of these actions including selecting a criminal remedy under Section 1-5 of the City Code, against any person in violation of the provisions of Sections 21-3-4 through 21-3-8 or the terms or conditions of any permit issued hereunder.

Sec. 21-3-7. Appeal Process.. Appeal Process.

(a) *Aggrieved Parties.*

(1) The following persons are aggrieved parties and are entitled to a hearing pursuant to this section:

- a. Any person whose application for a permit under Section 21-3-5 is denied or granted subject to conditions which are not agreed to by such person.

b. Any person to whom a permit has been issued and is revoked or modified pursuant to this Chapter.

c. Any person who is assessed a civil penalty pursuant to Section 21-3-6.

(2) Persons who do not qualify as an aggrieved party under North Carolina law and practices are not entitled to a hearing.

(b) Demand for a Hearing.

(1) Any aggrieved person may exercise such right. The demand for a hearing shall be in writing and state separately each issue to be considered and such other matters as are hereinafter required.

(2) Any person making a demand for a hearing shall deliver the demand to the Director within the following applicable time limits after receipt of notice of the action to be heard:

a. 30 days for the denial of a permit required by this Chapter or for the grant of a permit required by this Chapter subject to conditions which are not agreed to by the applicant;

b. 30 days for the assessment of a civil penalty; and

c. 10 days for the modification or revocation of a permit required by this Chapter.

(c) Contents of Written Demand for Hearing.

(1) In the case of denial of a permit, modification or revocation of a permit, or the granting of permit subject to conditions, the applicant must state separately every condition or reason for the action taken with which he disagrees, and show the basis for his disagreement;

(2) In the case of a civil penalty assessment, the person to whom such penalty was assessed must state separately each reason why such penalty should not be assessed or, if the person contends that the civil penalty was assessed in an improper amount, each reason why the amount of the penalty is improper.

(d) Conduct of Hearing.

(1) The hearing shall be conducted by the Director and shall be subject to such rules as have been approved by the Council or the Director as hereinafter set forth. If the demand for a hearing is not made in accordance with the provisions of this Chapter, the Director shall reject the demand and any right to a hearing shall be terminated. If any person demanding a hearing shall fail to comply with an order of the Director or with any rules issued by the Director and approved by the Council concerning the conduct of the hearing, the Director may reject the demand and any right to a hearing shall be

terminated. Within 90 days of the receipt of the written demand for a hearing, the Director shall conduct a hearing and issue a final order or decision; provided that, a hearing to consider the modification or revocation of a permit shall be held and a final order or decision issued within ten (10) days of the receipt of the written demand for a hearing. The Director shall transmit a copy of the final order or decision to the person demanding the hearing by registered or certified mail. No further review of the Director's final order or decision will be allowed, except as set forth in Section 21-3-7(f).

(2) The Director may submit rules to the City Council for approval concerning the conduct of the hearing herein provided for and any other matter associated with such hearing. Such rules may impose requirements in addition to the provisions of this Chapter. Upon approval by the City Council, such rules shall be as effective as if set forth in this Chapter. The Director shall make a copy of such rules available for inspection upon the request of any person.

(3) The Director is authorized to take any action which is reasonably necessary or convenient in considering a demand for hearing and in resolving the issues raised therein so long as such action is not contrary to the provisions of this Chapter, any rules approved by the City Council or other applicable law.

(4) The Director may appoint a hearing officer to conduct any hearing authorized by this Chapter. A hearing officer shall have the same authority to conduct a hearing and reach a decision as is provided to the Director; provided, that the decision of the hearing officer shall not be final but shall be a recommended decision for consideration by the Director. The Director may approve such decision without change, reject the decision and require a new or continued hearing, or issue a different or revised decision which is supported by evidence presented at the hearing. The Director may refer a recommended decision of a hearing officer to the City Manager.

In the event of a referral, the City Manager shall have the same authority to act upon a recommended decision of a hearing officer as is provided to the Director. The decision of the Director or, in the event of a referral, of the City Manager, shall be final. A final order may provide that the action which is the basis for the demand for a hearing is approved without change or may modify such action in any manner that is supported by the evidence presented at the hearing.

(5) The Director may provide for any part of the hearing to be recorded by any reasonable means, including but not limited to, audio and/or video recording, stenographer, or court reporter. A transcript of any hearing or part thereof which is recorded need not be prepared unless requested. The original of a requested transcript shall be filed with the Director. Each person shall bear the cost of the transcript which said person requests, including any copy thereof.

(e) Stay of Enforcement. Each assessment of a civil penalty which has been included in a demand for a hearing in accordance with the provisions of this Chapter is stayed and shall not take effect until the earliest occurrence of any one of the following circumstances:

The assessment of the civil penalty is approved or is modified at a hearing conducted pursuant to this Chapter; or the person who is assessed the civil penalty and the Director agree on the assessment.

If the assessment of a civil penalty against any person is approved or modified by the Director at a hearing conducted pursuant to this Chapter, the Director may require the payment of said penalty within ten (10) days or such additional time as the Director may specify.

(f) Appeal to Superior Court. Any person aggrieved by the final order or decision of the Director made pursuant to the hearing conducted under this Chapter, may seek judicial review of the order or decision by filing a written petition in the nature of certiorari within thirty (30) days after receipt of notice of the order or decision, but not thereafter, with the Superior Court of Buncombe County. If not previously requested, said person may request in writing that a transcript be prepared for every part of the hearing which was recorded. Said request shall be made at or before the time that the petition is filed. A copy of the petition shall be served on the City in the manner required by law. Within thirty (30) days after service of a copy of the petition upon the City or such other time as may be ordered by the Court, the City shall prepare and transmit to the Court the original or a certified copy of the official record of the hearing as hereinafter set forth. The official record of the hearing shall include:

- (1) All notices, motions and other similar documents;
- (2) All documentary and tangible evidence tendered at the hearing, including the transcript, if any, as is necessary for the Court's understanding of the matter; and
- (3) The final order or decision appealed from.
- (4) Such other material as may be necessary for the Court's understanding of the matter, or as may be ordered by the Court.

(g) Remission of Civil Penalty. The Director may consider petitions for remission of civil penalties assessed pursuant to this Chapter. A petition for remission shall be in writing and shall be signed by the person against whom the civil penalty was assessed. The petition shall include: a waiver of any and all rights of the petitioner to a hearing and judicial review of the assessment; and a stipulation that the facts are correct as set forth in the documents(s) assessing the civil penalty. The decision of the Director on the petition shall be final and shall not be subject to further administrative or judicial review. In determining whether a petition for remission will be approved, the Director shall consider the following factors:

- (1) Whether one or more of the factors concerning the assessment of a civil penalty in Section 21-3-6 were wrongly applied to the detriment of the Petitioner;

(2) Whether the Petitioner promptly abated continuing environmental damage resulting from the violation giving rise to the assessment;

(3) Whether the violation giving rise to the assessment was inadvertent or the result of an accident;

(4) Whether the Petitioner has been assessed civil penalties for any prior violations pursuant to this Chapter or by any State or Federal authority enforcing substantially similar provisions;

(5) Whether payment of the civil penalty by the Petitioner will prevent payment for any remaining, necessary remedial action.

(h) After submitting a petition for remission, the Petitioner shall provide such additional information and records as may be reasonably necessary or convenient to the Director's consideration of the petition. The Director may remit the entire amount of a civil penalty only when the Petitioner has not been assessed civil penalties for any prior violation of this Chapter or by State or federal authorities enforcing substantially similar provisions and the payment of the civil penalty will prevent payment of any remaining, necessary remedial action.

Sec. 21-3-8. Permits not transferable.. Permits not transferable.

Permits issued pursuant to this Chapter are issued to a specific person. A permittee may not assign, transfer, or sell a permit, or any right or obligation or a permit, to another person."

Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clause, or phrases be declared invalid.

Section 3. All ordinances and clauses of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance shall be in full force and effective on March 1, 1998.

Read, approved and adopted this 10th day of February, 1998.

City Clerk Mayor

Approved as to form:

City Attorney